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OFFICE OF PETITIONS

In re Patent of Rundt et al.	:	DECISION ON REQUEST
Patent No. 7,622,046	:	FOR RECONSIDERATION OF
Issue Date: November 24, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/531,464	:	AND NOTICE OF INTENT TO
Filing Date: October 13, 2005	:	ISSUE CERTIFICATE OF
Attorney Docket No. 150026.470USPC	:	CORRECTION

This is a decision on the petition filed December 16, 2009, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by nine hundred fifty-five (955) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by nine hundred fifty-five (955) days is **GRANTED to the extent indicated herein**.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

Patentees assert the period of delay under 35 U.S.C. § 154(b)(1)(B) (“B Delay”) is 588 days. However, the period of B Delay is 585 days.

Patentees’ determination of the period of B Delay is based on an assertion the date of commencement for the instant application is April 15, 2005.

The Manual of Patent Examining Procedure (“MPEP”) § 1893.01 (8th ed., Rev. 4, Oct. 2005) states, with emphasis added,

[I]n the absence of an express request for early processing of an international application under 35 U.S.C. 371(f) and compliance with the conditions provided therein, the U.S.

national stage will commence upon expiration of 30 months from the priority date of the international application.

The application papers were not filed with an express request for early processing under 35 U.S.C. § 371(f). Therefore, the national stage commenced 30 months after the priority date of the international application. In other words, the national stage commenced April 18, 2005.

B Delay is 585 days which is the number of days starting April 19, 2005, the day after the date of commencement, and ending on November 24, 2009, the date the patent issued.¹

Patentees state the number of days of overlap between delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and B Delay is 145 days. However, a review of the record indicates the number of days of overlap is 141 days.

The patent term adjustment is 956 days, which is the sum of 633 days of A Delay and 585 days of B Delay reduced by 141 days of overlap and 121 days of Applicant delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **nine hundred fifty-six (956)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

¹ The instant case does not contain any time periods falling under 35 U.S.C. §§ 154(b)(1)(B)(i)-(iii).

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,622,046 B2
ISSUE DATE : November 24, 2009
INVENTOR(S) : Rundt et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 512 days.

Delete the phrase "by 512 days" and insert - by 956 days--